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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 181015948-9482-02]

RIN 0648-BI54

**Pacific Island Fisheries; Annual Catch Limit and
Accountability Measures; Main Hawaiian Islands Deep 7
Bottomfish**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes an annual catch limit (ACL) of 492,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for each of the three fishing years 2018-19, 2019-20, and 2020-21. If NMFS projects that the fishery will reach the ACL in any given fishing year, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of that fishing year as an accountability measure (AM). This rule also makes housekeeping changes to the Federal bottomfish fishing regulations. This rule supports the long-term sustainability of Deep 7 bottomfish.

DATES: The final rule is effective [*Insert date 30 days after publication in the FEDERAL REGISTER*]. The final rule is applicable in fishing years 2018-2019, 2019-2020 and 2020-2021.

ADDRESSES: Copies of the Fishery Ecosystem Plan for the Hawaiian Archipelago are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

Copies of the environmental assessment (EA) and Finding of No Significant Impact for this action are available from <https://www.regulations.gov/docket?D=NOAA-NMFS-2018-0121>, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808-725-5185.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Deep 7 bottomfish fishery in Federal waters around Hawaii under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP), as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*),

kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Hyporthodus quernus*). The regulations at title 50, Code of Federal Regulations, part 665 (50 CFR 665.4) require NMFS to specify an ACL for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council.

The Council recommended NMFS implement the ACL and AMs for MHI Deep 7 bottomfish in fishing years 2018-19, 2019-20, and 2020-21. The Council based its recommendations on a NMFS 2018 benchmark bottomfish stock assessment, in consideration of the risk of overfishing, past fishery performance, the acceptable biological catch recommendation from its Scientific and Statistical Committee, and input from the public.

The 2018 stock assessment estimated the overfishing limit for the MHI Deep 7 bottomfish stock complex to be 558,000 lb, assuming three years of identical catch in fishing years 2018-19, 2019-20, and 2020-21. This overfishing limit is 206,000 lb more than the estimated overfishing limit described in the 2011 stock assessment, as updated in 2015. The ACL of 492,000 lb is 186,000 lb more than the ACL that NMFS specified last year based on the previous stock assessment (82 FR 29778, June 30, 2017). The ACL is associated with up to a 40 percent probability

of overfishing for each fishing year up to 2020-21, and is more conservative than the 50 percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson-Stevens Act.

NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If NMFS projects the fishery will reach the ACL, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of that fishing year, as an AM. As an additional AM, in the event that NMFS and the Council determine that the final MHI Deep 7 bottomfish catch exceeds the ACL in any given year, NMFS would reduce the ACL for the subsequent fishing year by the amount of the overage.

The fishery has not caught the specified annual limit in any year since 2011, and NMFS does not expect this rule to result in a change in fishing operations, or other changes to the conduct of the fishery that would result in significant environmental impacts.

This rule also makes administrative housekeeping changes to the regulations at 50 CFR part 665. This rule removes the description of the process of setting an annual total allowable catch, which has been superseded by the ACL process. The housekeeping changes also include updates to

the name of the multispecies stock complex and updates and revisions to the scientific, local, and/or common names of several species, including corrections to regulations that were amended by a February 8, 2019, final rule that reclassified six species of Hawaii bottomfish management unit species (MUS) at 50 CFR 665.201 as ecosystem component species (84 FR 2726). That rule clarified the names of certain species in §§ 665.220 and 665.401 by removing diacriticals that are not consistently represented across different typefaces, resulting in misspellings. That rule also reordered the species listed so they are alphabetical by scientific name, and corrected a misspelling of *P. sieboldii*. The February 8, 2019, rule was effective March 11, 2019, which was after the proposed rule for the current action was published. Therefore, some of the regulatory text in this rule is based on the regulatory language implemented in the February 8, 2019, final rule.

Comments and Responses

On March 12, 2019, NMFS published a proposed rule and request for public comments (84 FR 8835). The comment period ended April 11, 2019, and NMFS received seven public comments from five individuals that generally supported the ACL and AMs. NMFS considered the public comments and responds to comments below.

Comment 1: There should be some sort of minimum catch size limit to ensure sustainability of the juvenile bottomfish population.

Response: NMFS acknowledges the potential benefits of minimum size limits when a fishery is in need of additional management measures. However, the best available science indicates that Deep 7 bottomfish stocks are currently healthy, so additional management measures beyond those currently proposed and in effect are not necessary at this time. NMFS and the State of Hawaii will continue to monitor the fishery and may consider additional management measures, including, but not limited to, size limits if the best scientific information available indicates additional measures are necessary to ensure stock sustainability.

Comment 2: The annual catch limit (ACL) should remain for Deep 7 bottomfish indefinitely to ensure that the

fishery remains successful over the next three to five years.

Response: Pursuant to the Magnuson-Stevens Act and the Hawaii Fishery Ecosystem Plan, ACLs are a permanent part of the management regime for bottomfish management unit species. NMFS has managed the MHI Deep 7 bottomfish fishery through ACLs since 2011. As required by the Magnuson-Stevens Act, NMFS and the Council will continue to manage the fishery using ACLs after the end of the 3-year period to which this rule applies based on the best science available at that time.

Comment 3: There are insufficient data to accurately assess the impact on small businesses if Federal waters were closed to fishing. Further consideration would be necessary to evaluate how this proposed action will impact these fishing industry workers. A recommendation would be to establish a task force to accurately assess the impact of this rule in its totality as it pertains to small businesses.

Response: Section 4.3.1 of the EA specifically addresses the potential effects on the fishing community. Additionally, potential economic effects were also considered under the Regulatory Flexibility Act (section 5.11) and the Regulatory Impact Review (section 8). See

also the **CLASSIFICATION** section of the proposed rule, and specifically the description under the heading, "Certification of Finding of No Significant Impact on Substantial Number of Small Entities." each of these analyses determined that the action is not expected to have negative social or economic effects.

As described in the EA, the ACL implemented by this rule is sustainable. At the same time, it is substantially larger than the fishery's annual catch in recent years. Given the history of this fishery, we do not expect the fishery to reach the ACL in any fishing year and therefore, do not anticipate a fishery closure. In the unlikely event of such a fishery closure, however, this would mean that the fishery will have reaped economic and social benefits upon achieving a level of catch that the fishery has not realized since 1989.

Comment 4: The proposed action should provide regulations that prevent marine mammals, including bottlenose dolphins and Hawaiian monk seals, from becoming hooked or entangled in fishing gear.

Response: Pursuant to the Marine Mammal Protection Act, the MHI bottomfish fishery is a Category 3 fishery, with a remote likelihood of, or no known, incidental mortality or serious injury of marine mammals. To date,

there is no data indicating this fishery is the cause of serious injury or mortality to marine mammals. NMFS has also concluded that marine mammals protected under the Endangered Species Act, including the Hawaiian monk seal, are not likely to be adversely affected by the Hawaii bottomfish fishery. NMFS will continue to monitor the fishery and would consider additional bycatch management measures if the best scientific information available indicates such measures would be necessary to prevent and minimize interaction with marine mammals (and other protected species).

Comment 5: There should be some measure by which the agency reassesses the fish population on an annual basis to ensure that the limit remains reasonable. Should some unforeseen event affect the fish population so that the proposed ACL results in overfishing, adjustments, other than closing the fisheries for that year, would be warranted.

Response: NMFS assesses the status of Deep 7 bottomfish stocks approximately every three years. NMFS and the Council review these assessments, and also monitor catches and evaluate them each year relative to the ACL and associated risk of overfishing. These analyses are reported in annual Stock Assessment and Fishery Evaluation Reports,

presented at public meetings and available on the Council website (<http://www.wpcouncil.org/fishery-plans-policies-reports/fishery-reports-2/>). If significant new information becomes available, NMFS and the Council would use such information to determine whether changes to the management of the fishery, including changes in the ACL and AMs, are necessary.

Comment 6: One commenter questioned whether this action would lead to long-term sustainability when the new ACL is 186,000 lb more than the ACL for 2017-18, and greater than the highest reported landings over the past five fishing seasons.

Response: As described in the EA, the higher ACL for fishing years 2019-20 through 2020-21 is the result of improved stock conditions as described in the 2018 benchmark assessment for MHI Deep 7 bottomfish. Specifically, the 2018 stock assessment estimated the overfishing limit (OFL) for the MHI Deep 7 bottomfish stock complex to be 558,000 lb, assuming three years of identical catch in fishing years 2018-19, 2019-20, and 2020-21. This OFL is 206,000 lb more than the OFL in the 2011 stock assessment, as updated in 2015. According to the 2018 stock assessment, an ACL of 492,000 lb for 2018-2021 is

associated with a 40 percent probability of overfishing in each fishing year.

The 2018 assessment represents an improvement over the previous assessment upon which the 2017-18 ACL was based because it included more years of fishery data, an independent biomass estimate from a fishery-independent survey, improved fishery data filtering, and catch per unit of effort or CPUE standardization methods obtained through a series of workshops with fishermen and managers. As such, the 2018 stock assessment is the best scientific information available for assessing the status of the MHI Deep 7 bottomfish stocks.

Comment 7: Reopening of four of the bottomfish restricted fishing areas (BRFA) to fishing by the Hawaii Division of Aquatic Resources could lead to overfishing.

Response: The proposed opening of four BRFA to fishing is a State of Hawaii management action and is not part of this final rule.

Although the State may open four of the 12 BRFAs to fishing, this final rule ensures that total authorized catch of bottomfish will remain sustainable, regardless of the location of the catch. Thus, even if bottomfish are caught in one or more of the four BRFAs that would be open to fishing, the ACL and AMs would prevent catch from

reaching the OFL, or mitigate overages, if they were to occur, thus maintaining a healthy and sustainable fishery.

Changes From the Proposed Rule

This final rule contains no changes from the proposed rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that this action is necessary for the conservation, management, and long-term sustainability of Deep 7 bottomfish, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits,
Bottomfish, Fisheries, Fishing, Hawaii, Pacific Islands.

Dated: June 17, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends
50 CFR part 665 as follows:

PART 665 - FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665
continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 665.12, revise the definition of "Fishing
year" to read as follows:

§ 665.12 Definitions.

* * * * *

Fishing year means the year beginning at 0001 local
time on January 1 and ending at 2400 local time on December

31, with the exception of fishing for Deep 7 bottomfish and any precious coral MUS.

* * * * *

3. Amend § 665.201 by:

a. Adding in alphabetical order the definitions of "Deep 7 bottomfish" and "Deep 7 bottomfish fishing year;"

b. Revising the definition of "Hawaii bottomfish management unit species (Hawaii bottomfish MUS);"

c. Removing the definition of "Hawaii restricted bottomfish species fishing year;" and

d. Revising the definition of "Main Hawaiian Islands non-commercial bottomfish permit."

The revisions and additions to read as follows:

§ 665.201 Definitions.

* * * * *

Deep 7 bottomfish means the following species:

Local name	Common name	Scientific name
(1) lehi	silver jaw jobfish	<i>Aphareus rutilans</i>
(2) ehu	squirrelfish snapper	<i>Etelis carbunculus</i>
(3) onaga	longtail snapper	<i>Etelis coruscans</i>
(4) hapuupuu	sea bass	<i>Hyporthodus quernus</i>
(5) opakapaka	pink snapper	<i>Pristipomoides filamentosus</i>
(6) kalekale	pink snapper	<i>Pristipomoides sieboldii</i>
(7) gindai	snapper	<i>Pristipomoides zonatus</i>

Deep 7 bottomfish fishing year means the year beginning at 0001 local time on September 1 and ending at 2400 HST on August 31 of the next calendar year.

* * * * *

Hawaii bottomfish management unit species (Hawaii bottomfish MUS) means the following species:

Local name	Common name	Scientific name
(1) lehi	silver jaw jobfish	<i>Aphareus rutilans</i>
(2) uku	gray jobfish	<i>Aprion virescens</i>
(3) ehu	squirrelfish snapper	<i>Etelis carbunculus</i>
(4) onaga	longtail snapper	<i>Etelis coruscans</i>
(5) hapuupuu	sea bass	<i>Hyporthodus quernus</i>
(6) opakapaka	pink snapper	<i>Pristipomoides filamentosus</i>
(7) kalekale	pink snapper	<i>Pristipomoides sieboldii</i>
(8) gindai	snapper	<i>Pristipomoides zonatus</i>

Main Hawaiian Islands non-commercial bottomfish permit means the permit required by §665.203(a)(2) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any Hawaii bottomfish MUS or ECS in the MHI Management Subarea.

* * * * *

4. In § 665.204, revise paragraphs (h), (i), and (j) to read as follows:

§ 665.204 Prohibitions.

* * * * *

(h) Fish for or possess any Deep 7 bottomfish as defined in §665.201, in the MHI management subarea after a closure of the fishery, in violation of §665.211.

(i) Sell or offer for sale any Deep 7 bottomfish as defined in §665.201, after a closure of the fishery, in violation of §665.211.

(j) Harvest, possess, or land more than a total of five fish (all species combined) identified as Deep 7 bottomfish in §665.201 from a vessel in the MHI management subarea, while holding a MHI non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of §665.212.

* * * * *

§ 665.210 [Removed and Reserved]

5. Remove and reserve § 665.210.

6. Revise § 665.211 to read as follows:

§ 665.211 Annual Catch Limit (ACL).

(a) In accordance with § 665.4, the ACL for MHI Deep 7 bottomfish for each fishing year is as follows:

Fishing Year	ACL (lb)
(1) 2018-2019	492,000
(2) 2019-2020	492,000
(3) 2020-2021	492,000

(b) When an ACL is projected to be reached based on analyses of available information, the Regional

Administrator shall publish a notification to that effect in the **Federal Register** and shall use other means to notify permit holders. The notification will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than seven days after the date of filing the closure notification for public inspection at the Office of the Federal Register, until the end of the fishing year in which the ACL is reached.

(c) On and after the date specified in paragraph (b) of this section, no person may fish for or possess any Deep 7 bottomfish in the MHI management subarea, except as otherwise allowed in this section.

(d) On and after the date specified in paragraph (b) of this section, no person may sell or offer for sale Deep 7 bottomfish, except as otherwise authorized by law.

(e) Fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

7. Revise § 665.212 to read as follows:

§ 665.212 Non-commercial bag limits.

No more than a total of five fish (all species combined) identified as Deep 7 bottomfish may be harvested,

possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the MHI management subarea. Charter boat customers are also subject to the non-commercial bag limit.

8. In § 665.401, revise the definition of "Mariana bottomfish management unit species (Mariana bottomfish MUS)" to read as follows:

§ 665.401 Definitions.

* * * * *

Mariana bottomfish management unit species (Mariana bottomfish MUS) means the following fish:

Local Name	Common name	Scientific name
(1) lehi/maroobw	red snapper, silvermouth	<i>Aphareus rutilans.</i>
(2) tarakitu/etam	giant trevally, jack	<i>Caranx ignobilis.</i>
(3) tarakiton attelong, orong	black trevally, jack	<i>Caranx lugubris.</i>
(4) bueli, bwele	lunartail grouper	<i>Variola louti.</i>
(5) buninas agaga', falaghal moroobw	red snapper	<i>Etelis carbunculus.</i>
(6) abuninas, taighulupegh	red snapper	<i>Etelis coruscans.</i>
(7) mafuti, atigh	redgill emperor	<i>Lethrinus rubrioperculatus.</i>
(8) funai, saas	blueline snapper	<i>Lutjanus kasmira.</i>
(9) buninas, falaghal-maroobw	yellowtail snapper	<i>Pristipomoides auricilla.</i>

(10) buninas, pakapaka, falaghal- maroobw,	pink snapper	<i>Pristipomoides filamentosus.</i>
(11) buninas, falaghal-maroobw	yelloweye snapper	<i>Pristipomoides flavipinnis.</i>
(12) buninas, falaghal-maroobw	pink snapper	<i>Pristipomoides sieboldii.</i>
(13) buninas rayao amariyu, falaghal- maroobw	flower snapper	<i>Pristipomoides zonatus.</i>

9. In § 665.601, in the table to the definition of "PRIA bottomfish management unit species (PRIA bottomfish MUS)":

- a. Revise the first column heading;
- b. Designate the entries as paragraphs (1) through (12); and
- c. Revise newly designated paragraph (5) .

The revisions read as follows:

§ 665.601 Definitions.

* * * * *

PRIA bottomfish management unit species (PRIA bottomfish MUS) means the following fish:

Common name	Scientific name
* * * * *	
(5) Sea bass	<i>Hyporthodus quernus.</i>
* * * * *	

[FR Doc. 2019-13108 Filed: 6/21/2019 8:45 am; Publication Date: 6/24/2019]